



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2015-0323]**

**Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA).

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 21 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs for up to 2 years in interstate commerce.

**DATES:** Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments to the Federal Docket Management System (FDMS) Docket No. FMCSA-2015-0323 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov> as described in the system records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

**FOR FURTHER INFORMATION CONTACT:** Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, or via email at [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), or by letter

to FMCSA, Room W64-113, Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for up to a 2-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statutes allow the Agency to renew exemptions at the end of the 2-year period. The 21 individuals listed in this notice have requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria<sup>1</sup> to assist medical examiners in determining whether drivers with certain medical conditions are

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<sup>1</sup> See [http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391\\_171](http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171). a and <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

The advisory criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of medical examiners misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner based on the physical qualification standards and medical best practices.

## **II. Qualifications of Applicants**

### Jason J. Amoriello

Mr. Amoriello is a 42 year-old driver in Wisconsin. He has a history of a seizure disorder and has remained seizure free since 1984. He takes anti-seizure medication with the dosage and frequency remaining the same since 2012. His physician states that he is supportive of Mr. Amoriello receiving an exemption.

### Mark Douglas Anderson

Mr. Anderson is a 52 year-old class B CDL holder in North Carolina. He has a history of a seizure disorder and has remained seizure free since 1991. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Anderson receiving an exemption.

### Jeffrey Neal Bienstock

Mr. Bienstock is a 48 year-old class A CDL holder in Arizona. He has a history of a seizure disorder and has remained seizure-free since 2003. He discontinued anti-seizure medication in 2008. His physician states that he is supportive of Mr. Bienstock receiving an exemption.

Jeremy Neal Bradford

Mr. Bradbord is a 39 year-old class A CDL holder in Alabama. He has a history of epilepsy and has remained seizure-free since 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since 2013. His physician states that he is supportive of Mr. Bradford receiving an exemption.

Joseph Steven Drion

Mr. Drion is a 52 year-old class B CDL holder in Missouri. He has a history of a seizure disorder and has remained seizure-free since 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Drion receiving an exemption.

Kenneth B. Elder

Mr. Elder is a 49 year-old class A CDL holder in Kentucky. He has a history of a seizure disorder and has remained seizure-free since 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Elder receiving an exemption.

Steven W. Farver

Mr. Farver is a 50 year-old driver in Pennsylvania. He has a history of a seizure disorder and has remained seizure-free since 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Farver receiving an exemption.

Richard M. Foster

Mr. Foster is a 49 year-old driver in Oklahoma. He has a history of a seizure disorder and has remained seizure-free since 2007. He takes anti-seizure medication with

the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Foster receiving an exemption.

Jeffrey Brett Green

Mr. Green is a 42 year-old class B CDL holder in California. He has a history of a seizure disorder and has remained seizure-free since 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Green receiving an exemption.

Stephen M. Harmon

Mr. Harmon is a 39 year-old driver in West Virginia. He has a history of a seizure disorder and has remained seizure-free since January 2005. He takes anti-seizure medication with the dosage and frequency remaining the same since 2010. His physician states that he is supportive of Mr. Harmon receiving an exemption.

Donald Horst

Mr. Horst is a 66 year-old driver in Maryland. He has a history of a single seizure in 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Horst receiving an exemption.

Jordan M. Hyster

Mr. Hyster is a 27 year-old class A CDL holder in Ohio. He has a history of a seizure disorder and has remained seizure-free since January 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Hyster receiving an exemption.

Christopher A. Koger

Mr. Koger is a 42 year-old class A CDL holder in Pennsylvania. He has a history of a seizure disorder and has remained seizure-free since 2007. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Koger receiving an exemption.

Kyle Philip Loney

Mr. Loney is a 32 year-old driver in Washington. He has a history of a seizure disorder and has remained seizure-free since January 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Loney receiving an exemption.

Leigh P. Mallory

Mr. Mallory is a 65 year-old driver in Vermont. He has a history of a seizure disorder and has remained seizure-free since 1997. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Mallory receiving an exemption.

Sean Nesbitt

Mr. Nesbitt is a 44 year-old driver in New York. He has a history of a seizure disorder and has remained seizure-free since 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Nesbitt receiving an exemption.

Ashley Nicole Rialson

Ms. Rialson is a 28 year-old driver in Minnesota. She has a history of epilepsy and has remained seizure-free since 2005. She takes anti-seizure medication with the



dosage and frequency remaining the same since that time. Her physician states that she is supportive of Ms. Rialson receiving an exemption.

Gonzalin Sanabria

Mr. Sanabria is a 61 year-old class B CDL holder in New York. He has a history of a seizure disorder as the result of brain lymphoma that was diagnosed in 2003. He remains in remission and has been seizure free since 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Sanabria receiving an exemption.

David Sica

Mr. Sica is a 53 year-old driver in Connecticut. He has a history of a seizure disorder and has remained seizure free since 1985. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Sica receiving an exemption.

Raymond H. Van De Mark

Mr. Van De Mark is a 62 class A CDL holder in New Jersey. He has a history of a seizure disorder and has remained seizure free since 1986. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Van De Mark receiving an exemption.

William Frederick Youse

Mr. Youse is a 24 year-old driver in North Carolina. He has a history of childhood epilepsy and has been seizure free since 2002. He has not taken anti-seizure medication since 2005. His physician states that he is supportive of Mr. Youse receiving an exemption.

### **III. Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

### **IV. Submitting Comments**

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number “FMCSA-2015-0323” and click the search button. When the new screen appears, click on the blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period. FMCSA may issue a final determination any time after the close of the comment period.

## **V. Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2015-0323 and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to this notice.

**Issued on: July 27, 2016**

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Larry W. Minor  
Associate Administrator for Policy

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